IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs August 8, 2006

STATE OF TENNESSEE v. ANTHONY SHANNON LANE

Direct Appeal from the Criminal Court for Wilson County
No. 00-1516 J.O. Bond, Judge

No. M2005-02435-CCA-R3-CD - Filed November 13, 2006

The defendant, Anthony Shannon Lane, was convicted of aggravated child abuse and sentenced to twenty-five years in the Department of Correction to be served at 100%. On appeal, he challenges the sufficiency of the convicting evidence and the sentence imposed by the trial court. Following our review of the record and the parties' briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and NORMA McGEE OGLE, JJ., joined.

William K. Cather, Assistant District Public Defender, Lebanon, Tennessee, for the appellant, Anthony Shannon Lane.

Paul G. Summers, Attorney General and Reporter; David H. Findley, Assistant Attorney General; Tom P. Thompson, Jr., District Attorney General; and Robert N. Hibbett, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. BACKGROUND

In September 2000, the defendant was charged with the aggravated child abuse of his three-month-old son, Anthony Ryan Webb. Testimony from his March 2003 trial was as follows.

Christie Webb, the infant victim's mother, testified that in August 2000 she and the defendant were living in a one room building behind a trailer in Wilson County because she was trying to avoid arrest in Rutherford County on other charges. Ms. Webb explained that earlier in the day of the incident, she took the victim to the doctor because of an ear infection, and he was somewhat fussy because of his medication. After returning home, she fed the victim. Thereafter, she and the defendant ate supper, and she went outside to rinse the dishes because they did not have running

water inside. Ms. Webb asked the defendant to watch the victim, who was lying in an infant carrier in the middle of the bed.

Ms. Webb recalled that a few minutes later, the defendant came outside with the victim, saying that the victim fell off the bed and was not breathing. The defendant told her that he thought he heard her call for him, he came out on the porch, and then turned around and saw the victim on the floor crying. Ms. Webb called 911, but the defendant hung up the phone. Ms. Webb asked the defendant what he was doing and he said nothing. The 911 operator called back, and police and medical personnel were dispatched to the residence. The defendant just stood there while she talked to 911. Ms. Webb said that the infant carrier was still on the bed when she went inside to check on the victim.

Ms. Webb stated that the victim was taken to the Lebanon Medical Center then flown to Vanderbilt Hospital. Ms. Webb recalled that at the hospital, the defendant acted like he did not want her around the victim and said that she was spending too much time around the victim and needed to let him rest. Ms. Webb admitted that she told Dr. Clayton at the hospital that she had been the victim of domestic assault but had never filed a police report. Ms. Webb denied telling a neighbor the day of the incident that the victim had red marks on his neck. Ms. Webb acknowledged that she was presently incarcerated for reckless aggravated assault arising out of this same incident.

Dot Reynolds, Wilson County 911 Director, testified that there was a hangup call from the defendant's residence, after which, the 911 operator called back to investigate. Emergency Medical Technician Scott Lorden testified that he went to the residence, found the victim breathing sporadically, and took the victim to the senior paramedic, who transported him to the helicopter landing pad at the hospital.

Police Detective Pat Hamblin testified that she investigated the residence and took pictures of the scene. When Detective Hamblin entered the residence, she noticed that the infant carrier was sitting on the bed. Detective Hamblin stated that she had no way of knowing whether things had been moved prior to her arrival. Detective Hamblin noted that the offense report revealed that the victim had red marks on his neck and also that Ms. Webb had left the victim with relatives for several days approximately a week before this incident. Detective Hamblin did not recall seeing any dishes near the area outside where Ms. Webb said she was rinsing dishes.

Dr. Robert Humphrey testified that he was presently the victim's pediatrician. Dr. Humphrey stated that the victim suffers from seizures, contractures of his arms and legs, and blindness in both eyes due to detached retinas. Dr. Humphrey said he agreed with a neurologist's diagnoses that the victim has cerebral palsy, secondary to non-accidental brain injury with secondary severe global developmental delay, blindness, epilepsy, and failure to thrive.

Officer Ricky Knight with the Wilson County Sheriff's Department testified that he measured the distance from the top of the infant carrier to the floor as a little over 30 inches. Officer Knight measured the height of the bed as two feet. Officer Knight said that he took a statement from the

defendant at the hospital and did not put the defendant under arrest at that time. In the statement, the defendant said that:

> [Ms. Webb] fixed supper. I was feeding [the victim] some apple sauce and he drank some milk. He was in his car seat at that time. She got done with supper and we ate on the bed . . . . [Ms. Webb] was outside washing some bowls off and I thought I heard her say my name. . . . I then took eight to ten steps away from [the victim] and walked to the door and stuck my head out . . . . I turned around and saw [the victim] laying face down on the floor. He was real still. I rolled him over, picked him up. I could tell something was wrong with him. He cried just a little bit and then stretched and then went limber. I shook him slightly and I cradled him in my arms and took him out to [Ms. Webb] and told her that he fell. . . .

Officer Knight stated that he went to the defendant's residence after the interview, and he did not see a water hose or any dishes laying around outside.

Dr. Ellen Wright Clayton, board-certified pediatrician and law professor, testified that she had evaluated child abuse cases for fifteen years. Dr. Clayton examined the victim within an hour or two of his arrival at the hospital. The victim appeared well-nourished, but was "really out of it," on a breathing machine, and critically ill. Dr. Clayton could only perform a limited physical examination at that time due to the number of tubes in the victim, but Dr. Clayton did see a bruise on the end of the victim's nose and bruising under and into his eyes.

Dr. Clayton stated that the victim had several brain scans that revealed blood over the top of his head and some blood in the back of his head. There was also evidence of a prior injury to the victim's brain as well as large hemorrhages in the back of his eyes. Dr. Clayton noted that the retina in the victim's right eye was detached. Dr. Clayton noted that this injury was not typically the result of an accident but found in cases of child abuse.

Dr. Clayton stated that she talked to both parents; Ms. Webb said that she was outside watering the plants when she "heard a call" and was given the victim who was lifeless. The defendant told her that the victim was sitting in a car seat on the bed, unrestrained, and he was feeding the victim when he thought he heard Ms. Webb calling him. The defendant said that he stepped away to look out the window, heard a thud, and saw the victim face down on the floor.

Dr. Clayton testified that, in her opinion, a three-month-old baby does not have the strength to get out of a car seat. Moreover, she said it would take much more force, such as a high-speed car accident or falling from a second-story window, to create the kind of injuries the victim suffered. Dr. Clayton stated that the victim's head injuries were not caused by a three foot fall from the bed, but instead, the victim suffered non-accidental inflicted trauma. In response to questioning regarding whether she was aware that the victim was born with cocaine in his system due to his mother ingesting cocaine during pregnancy, Dr. Clayton admitted she was not aware but said that having cocaine in his system was not what caused the victim's injuries.

When asked whether the victim could have fallen off the bed when the defendant got up off the bed, Dr. Clayton stated "[t]here was no testimony he was on the bed," and "if he knocked the baby off he would have not walked several steps to the window." In response to questioning regarding whether it was possible the victim fell on the floor because the infant carrier tipped over, Dr. Clayton said that "[t]here is no set of circumstances that I can imagine where this child fell off the bed either in or out of the infant carrier onto the floor and sustained the injuries that this child has."

Upon the conclusion of the proof, the jury convicted the defendant of aggravated child abuse of a victim under six years of age, a Class A felony. Following a sentencing hearing, the trial court sentenced the defendant to twenty-five years in the Department of Correction to be served at 100%.

II. ANALYSIS

A. Sufficiency

The defendant first challenges the sufficiency of the convicting evidence. Specifically, he argues that there was no proof that he knowingly caused the injuries to the victim or that the victim's injuries were not inflicted accidentally by falling off the bed.

We begin our review by reiterating the well-established rule that once a jury finds a defendant guilty, his or her presumption of innocence is removed and replaced with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). Therefore, on appeal, the convicted defendant has the burden of demonstrating to this court why the evidence will not support the jury's verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). To meet this burden, the defendant must establish that no "rational trier of fact" could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Evans*, 108 S.W.3d 231, 236 (Tenn. 2003); Tenn. R. App. P. 13(e). In contrast, the jury's verdict approved by the trial judge accredits the state's witnesses and resolves all conflicts in favor of the state. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). The state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from that evidence. *Carruthers*, 35 S.W.3d at 558. Questions concerning the credibility of the witnesses, conflicts in trial testimony, the weight and value to be given the evidence, and all factual issues raised by the evidence are resolved by the trier of fact and not this court. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). We do not attempt to re-weigh or re-evaluate the evidence. *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006). Likewise, we do not replace the jury's inferences drawn from the circumstantial evidence with our own inferences. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002). These rules are applicable to findings of guilt predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999).

A person commits aggravated child abuse who "commits the offense of child abuse . . . as defined in § 39-15-401[,] and . . . [t]he act of abuse . . . results in serious bodily injury to the child[.]" Tenn. Code Ann. § 39-15-402(a)(1). Child abuse occurs when a person "knowingly, other than by accidental means, treats a child under eighteen (18) years of age in such a manner as to inflict injury . . . ." *Id.* § 39-15-401(a). If the victim of aggravated child abuse is six years of age or less, the offense is a Class A felony. *Id.* § 39-15-402(b).

In this case, there was sufficient proof for the jury to find that the victim's injuries were knowingly caused by the defendant and did not occur by accidental means. Dr. Clayton testified that extreme force, the equivalent of falling from a two-story window, would be required to inflict the type of injuries the victim suffered. Dr. Clayton specifically said that she could think of no set of circumstances where the victim could have fallen off the bed and onto the floor and sustained the injuries that the victim sustained. Additionally, the proof indicated that the defendant was alone with the victim at the time the incident occurred. Thus, the jury could infer that the defendant knowingly inflicted the injuries on the victim. *See State v. Gerald Pendleton*, No. W2003-03043-CCA-R3-CD, 2004 WL 2941153, at *9 (Tenn. Crim. App., at Jackson, Dec. 20, 2004), *perm. app. denied* (Tenn. May 9, 2005) (where the defendant was alone with the victim when the injuries occurred and the injuries sustained could have only resulted from severe force, the jury could infer the defendant knowingly inflicted the injuries). While there may have been some inconsistent testimony at trial, we reiterate that questions concerning the credibility of witnesses and inferences drawn from circumstantial evidence were resolved by the jury as the trier of fact. *Bland*, 958 S.W.2d at 659. Accordingly, we conclude the evidence, in the light most favorable to the state, was sufficient to sustain the defendant's conviction for aggravated child abuse. Therefore, the defendant is not entitled to relief.

B. Sentencing

The defendant next argues that the trial court abused its discretion in sentencing him to twenty-five years incarceration. At the sentencing hearing, Auodeji Folayan, a probation and parole officer, testified that he prepared the defendant's pre-sentence report. According to Officer Folayan's findings, the defendant started accruing convictions at the age of 18. Officer Folayan stated that one conviction in particular was for aggravated child abuse for which the defendant was sentenced to ten years in the Tennessee Department of Correction. Officer Folayan said that the defendant served the entire sentence in confinement.

This court's review of a challenged sentence is a de novo review of the record with a presumption that the trial court's determinations are correct. Tenn. Code Ann. § 40-35-401(d). This presumption of correctness is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances. *State v. Pettus*, 986 S.W.2d 540, 543-44 (Tenn. 1999). However, if the record shows that the trial court failed to consider the sentencing principles and all relevant facts and circumstances, then review of the challenged sentence is purely de novo without the presumption of correctness. *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). On appeal, the party challenging the sentence imposed by the trial

court has the burden of establishing that the sentence is erroneous. Tenn. Code Ann. § 40-35-401, Sentencing Commission Comments.

In conducting our de novo review of a sentence, this court must consider (a) the evidence adduced at trial and the sentence hearing; (b) the pre-sentence report; (c) the principles of sentencing; (d) the arguments of counsel as to sentencing alternatives; (e) the nature and characteristics of the offense; (f) evidence and information offered by the parties on the enhancement and mitigating factors; and (g) the defendant's potential or lack of potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-103(5), -210(b); *State v. Imfeld*, 70 S.W.3d 698, 704 (Tenn. 2002).

As a Range I offender convicted of a Class A felony, the defendant was subject to a potential sentence of fifteen to twenty-five years with the presumed sentence being the midpoint in the range, twenty years.[1] Tenn. Code Ann. § 40-35-112(a)(1), -210(c). However, this sentence could be enhanced or reduced based upon the existence of applicable enhancement or mitigating factors. *Id.* § 40-35-210(d), (e). The weight given to each enhancement or mitigating factor was left to the discretion of the trial court based upon the record before it. *State v. Shelton*, 854 S.W.2d 116, 123 (Tenn. Crim. App. 1992).

In this case, the trial court enhanced the defendant's sentence based on the defendant's prior criminal record, the victim's vulnerability, the defendant's previous history of unwillingness to comply with the conditions of a sentence involving release in the community, and the defendant's violation of a position of private trust.[2] *See* Tenn. Code Ann. § 40-35-114(1), (4), (8), and (15).

After careful review, the record does not support the application of enhancement factor (8), the defendant's unwillingness to comply with the terms of a sentence involving release in the community. *See* Tenn. Code Ann. § 40-35-114(8). Nonetheless, the record supports the trial court's application of the remaining three enhancement factors. *See id.* § 40-35-114(1), (4), and (15). The record reflects that the defendant has a prior criminal record, including a previous conviction for aggravated child abuse, as well as convictions for theft and passing worthless checks. The record also reflects that the victim was particularly vulnerable, in that, being only three-months old, the victim was unable to summon help, resist the defendant's attack, or testify against the defendant. *See State v. Collins*, 986 S.W.2d 13, 23 (Tenn. Crim. App. 1998). The record further reflects that the defendant abused a position of private trust, the parent-child relationship. *See State v. Gutierrez*, 5 S.W.3d 641, 645 (Tenn. 1999).

The defendant concedes he did not raise any mitigating factors to the trial court, but argues on appeal that evidence of his lack of sustained intent to violate the law and remorse apply to his case in mitigation. *See* Tenn. Code Ann. § 40-35-113(11), (13).

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[1] The defendant was convicted and sentenced prior to the June 2005 revisions to the sentencing act.

[2] The trial court actually said position of *public* trust in its findings, but because the victim is the defendant's son, it is clear that the trial judge mis-spoke and meant to say position of *private* trust. The defendant concedes that the aggravated child abuse of one's own child would be a violation of a position of private trust.

Upon review, we conclude, as found by the trial court, the record does not support the application of any mitigating factors. The record does not support the defendant's allegation that he had a lack of sustained intent to violate the law because he was under stress when he inflicted the injuries. The defendant argues from the assumption that his act of shaking the victim upon finding him on the floor was the act of abuse at issue. However, the defendant's argument overlooks the evidence at trial that the victim could not have fallen on the floor on his own, and even if he had, falling off the bed could not have caused injuries as serious as those sustained by the victim. The defendant failed to point to any stressors in the record that would mitigate the abusive contact with the victim that caused the victim to end up on the floor with a bruised nose, eyes, and swelling in his brain.

The record also does not support any showing of remorse as alleged by the defendant. While the defendant may have comforted the victim at some point, the evidence at trial indicated that the defendant hung up the phone on Ms. Webb's attempt to contact 911 which militates against a showing of remorse.

The defendant's final assertion is that his sentence is contrary to the purpose and intent of the sentencing act. Specifically, he argues that his sentence is not justly deserved in relation to the seriousness of the offense, is inconsistent with sentences imposed in other cases, and does not prevent crime and promote respect for the law. Once again, the defendant framed his argument to ignore the convicting evidence at trial. The evidence at trial did not establish that the victim was accidentally injured when he somehow fell off the bed causing the defendant to panic and shake him. Instead, the evidence, as accepted by the jury in light of its verdict, showed that the defendant knowingly abused his own child to the point the child sustained severe brain and other physical injuries.

In light of the proof, we cannot conclude that the trial court's sentencing the defendant to twenty-five years was an abuse of discretion. Thus, the defendant is not entitled to relief.

III. CONCLUSION

Based on the aforementioned authorities and reasoning, we affirm the judgment of the Wilson County Criminal Court.

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J.C. McLIN, JUDGE